IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRI. APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1641 OF 2004

Mr. Surendra Yeshwant Karnik
Sole Proprietor of
M/s. Karnik & Associates,
at A/3, Flat No.7,
Dudh Sagar Co-op. Hsg. Society,
Goregaon (E), Mumbai - 400 063. ... Petitioner

V/s

1. The Sr. Inspector of Police,
   Vakola Police Station, Mumbai.

2. The State Of Maharashtra, Mumbai.

3. Kondibhau Pokharkar,
   102, Ramkrishna Niwas, 1st flr.,
   Gokhale Road, Dadar (West),
   Mumbai. ... Respondents

Mr. S.R. Chitnis with S.V. Kotwal for the petitioner.

Mr. B.H. Mehta, A.P.P. for the Respondent Nos. 1 & 2.

Mr. Rajeev Matkar for the Respondent No.3.

CORAM: R.M.S. KHANDEPARKAR & P.V. KAKADE, JJ.

DATED: 4TH APRIL, 2005

ORAL JUDGMENT (Per Khandeparkar, J.):

1. Heard. Perused the record.

2. The petitioner challenges the F.I.R. No. 2 of 2004

recorded on 23.7.2004 at Vakola Police Station, Mumbai, pursuant to the order of the Magistrate dated 19.7.2004. The challenge is on limited ground that the grievance disclosed in the complaint filed by the respondent No.2 does not disclose any offence punishable either under the Trade & Merchandise Marks Act, 1958 or Trade Marks Act 1999 and, therefore, the police could not have registered the F.I.R. in relation to the alleged offence punishable under Sections 78 & 79 of the Trade and Merchandise Marks Act, 1958. Simultaneously, the petitioner also challenges the powers of the Police Inspector to conduct the search and effect seizure of the goods alleged to be the goods seized in the course of investigation.

3. It is the contention of the petitioner that the Trade and Merchandise Marks Act, 1958 was repealed and Trade Marks Act, 1999, hereinafter called as "the Act of 1999", came into force from 15.9.2003. It is the case of the petitioner that the facts alleged in the complaint nowhere reveal that the respondent No.2 is the holder of registered trade mark in respect of the mark in relation to which the complaint of infringement under the provisions of the Trade & Merchandise Marks Act, 1958 has been filed and, therefore, considering the

provisions of Sec. 29 of the Act of 1999 read with Sec. 189 thereof, the police could not have registered the F.I.R. in relation to the alleged offences under the Trade & Merchandise Marks Act, 1958 or under any provision of the Act of 1999. Besides, the search of premises and seizure of goods in the case in hand, in the course of investigation pursuant to the recording of the said F.I.R. was taken and effected on 23.7.2004 i.e. much after the date of coming into force of the Act of 1999 and therefore the provisions of Sec. 115 (4) thereof were attracted and hence the Inspector of Vakola Police Station who had carried out the search of the premises and seized the goods could not have done so being not of the rank of the Dy. Superintendent of Police.

4. Upon hearing the learned advocate for the parties and on perusal of the record, while the fact that respondent No.2 does not possess the registration certificate under the Trade & Merchandise Marks Act, 1958 in relation to the mark in question, is being fairly conceded on behalf of the respondent No.2 and that, therefore, it is apparent that no F.I.R. could have been recorded nor investigation regarding the alleged offence either under the Trade & Merchandise

Marks Act, 1958 or under the Act of 1999 could be carried out.

5. As regards the search and seizure is concerned, it is sought to be argued that no fault can be found with the search of the premises or seizure of the goods as the same has been carried out by the Inspector of Police and in exercise of powers in relation to the search and seizure under Sec. 63 of the Copy Right Act, 1957. Any Sub-Inspector is entitled to exercise those powers and, therefore, there is no case for finding fault either with the search of the premises or the seizure of the goods. The contention is sought to be countered by the learned advocate for the petitioner submitting that the challenge to the search and seizure relates to one under Trade & Merchandise Marks Act, 1958 or the Act of 1999 and the challenge is not relating to the search and seizure under the Copy Right Act, 1957.

6. Since there is no challenge to the search and seizure as far as it relates to the investigation under the Copy Right Act, 1957, certainly there is no need to consider the said issue in relation to the provisions of the Copy Right Act, 1957. Even otherwise, it would not be necessary to consider the contention sought to be

raised by and on behalf of the petitioner about the illegality of search and seizure, once it is apparent that the respondents fairly concede about the absence of the case for proceeding with the investigation in relation to the alleged offences either under the Trade & Merchandise Marks Act, 1958 or under the Act of 1999 and further submits that the complaint would be restricted to the alleged offences alleged to have been committed under other statutes. Being so, it is not necessary to adjudicate upon the issues sought to be raised about the illegality regarding the said search and seizure on account of the fact that the same has been carried out and effected under the supervision of the Inspector of Police. In any case, such irregularity would not warrant interference in writ jurisdiction. Nothing prevents the parties to raise the necessary objection in that regard in the course of the proceedings before the concerned Magistrate or the concerned criminal court dealing with the matter in the case the chargesheet is filed against the parties. Suffice to observe that, in case of such objection is raised, the Court below will have to have due regard to the provisions of Sections 460 & 461 of the Cr.P.C. while deciding such objection.

7. For the reasons stated above, therefore, once it is conceded on behalf of the respondents that the allegations in the complaint are not sufficient to enable the police authorities to investigate as regards the alleged offences under Trade & Merchandise Marks Act, 1958 or the Act of 1999, the F.I.R. in question is not being challenged on any other ground, no relief in the nature asked for in the petition is called for except recording the said concession on behalf of the respondents. Hence, the petition is disposed of while recording the said concession on behalf of the respondents and the Rule is accordingly discharged with no order as to costs.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)